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Date: September 28, 2004   By: _____
                                        Lisa Mansur

In Re Application of:
 	
    Francois-Xavier NUTTALL
 	
Serial No: 09/757,951
 	
Filed: January 10, 2001
 	
For: METHOD FOR COMPUTER NETWORK OPERATION PROVIDING BASIS FOR USAGE FEES
	Examiner:
	   Mary CHEUNG
	
	Art Unit: 3621

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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APPELLANT'S REPLY BRIEF

(Filed in Triplicate)

This Reply Brief is submitted pursuant 37 CFR 1.193(b)(1) for U.S. Appl. Ser. No. 09/757,951 in reply to the Examiner's Answer mailed July 28, 2004 which was in response to Appellant's Brief submitted April 27, 2004 in an appeal to the Board of Patent Appeals and Interferences from a Final Office Action dated November 4, 2003 and a subsequent Advisory Action dated February 10, 2004 in which the Examiner finally rejected claims 9-13, 7-21, 24-30, and 34-37 of above referenced patent application. The Notice of Appeal was submitted on February 27, 2004.

The following arguments are presented in a manner corresponding to the order in which the arguments were presented in the Examiner Answer of July 28, 2004. It should be understood that all arguments and statements presented in Appellant's Brief dated April 27, 2004 still stand and are incorporated herein by reference.

A.   **Reply to Examiner's Argument Number 1:** **Ginter does not teach receiving a first report in response to a transaction where a digital work was provided and the transaction was conducted in response to a request.**

According to the Examiner, Ginter teaches the receiving of a first report in response to a transaction where a digital work was provided to a content requesting node by a content providing node in the manner recited in the appealed claims. In order to support this position, the Examiner relies on the description in Ginter of event, meter, billing and budget processes that take place inside a content user 112 and through which reports may be generated (see column 55, line 61 to column 56, line 16 of Ginter). However, the event, meter, billing and budget processes of Ginter clearly set forth conditions that are contrary to the "receiving a first report" limitations of the appealed claims and therefore, do not support the Examiner's position.

The reliance on the description of event, meter, billing and budget processes in Ginter illustrates a fundamental misunderstanding by the Examiner of the difference between Ginter and the appealed claims. The section of Ginter that describes the event, meter, billing and budget processes ends at column 56, lines 28-29 with the following statement: "Content may be supplied to the user once these processes [(i.e., the event, meter, billing and budget processes)] have been successfully performed." This sentence clearly and unequivocally indicates that whatever reporting is performed by these processes in Ginter occurs prior to delivery of the work (i.e., content) and not in response to the transaction that provides the digital work in the manner recited in the appealed claims. The difference in the timing for generating reports between Ginter and the appealed claims is inescapable. In the appealed claims, the first report is generated by a content provider as a result of content being provided to a content requester whereas, in Ginter, a report is generated prior to the content being provided to the requester.

In addition, what the Examiner relies on in Ginter as a "request" is more accurately described as a "request for use" which is different than the "request" set forth in the appealed claims. The request or, more accurately, "request for use" in Ginter is directed to processes that are internal to a requester of content (i.e., content user 112) (Note: The processes described in Ginter are performed internally by the content user 112 because only content user 112 has both the "request for use" and the revised rules to work with in order to carry out the described processes). In contrast, in the appealed claims, the first report is provided to a reconciler externally from a content provider in response to a transaction conducted between the content provider and a content requester where the content provider provides the digital work to the content requester in response to a request from the content requester to the content provider.

Thus, for at least these reasons and the reasons set forth in Appellant's Brief, the "receiving a first report" limitation recited in the appealed claims is not taught, described, or suggested in Ginter and is not supplied by the other cited references.

B. **Reply to Examiner's Argument Number 2: Ginter does not teach the receiving of a second report in response to the supplying of information to validate the request for content.**

In the Examiner's Answer, the Examiner asserts that Ginter teaches receiving a second report that originated from a content manager in response to supplying information by the content manager to validate the request because "the Clearinghouse 116 in Fig. 2 of Ginter corresponds to the content managing node, and the VDE Right Distributor 106 of Fig. 2 corresponds to the reconciling node, and the VDE Right Distributor 106 receives a second report (the payments and payment related information) from the Clearinghouse 116 to validate the request, such as the request for turn a new page of an electronic book (column 53 lines 60-63 and column 55 lines 61-67)."

As discussed in the Reply to Examiner's Argument No. 1, the Examiner improperly equates the "request for use" described in Ginter with the "request" recited in the appealed claims. The "request for use" in Ginter is not a "request" as claimed because Ginter makes no

mention of a transaction being conducted in response to a request where the transaction provides a digital work to a content requesting node. Simply put, the processes performed by the content user 112 in Ginter, as previously discussed, do not operate on a "request" as functionally described in the claim limitations. Since Ginter fails to disclose a request that is the same as the request recited in the appealed claims, there is consequently nothing in Ginter that describes validating a request in a manner recited in the appealed claims.

The Examiner is also incorrect in equating the Clearinghouse 116 of Ginter to a content managing node as recited in the appealed claims because the Clearinghouse 116 does not supply information to validate a request as recited in the appealed claims. In Ginter, reports provided by the Clearinghouse 116 are described merely as "usage reports" and "payments." These usage reports and payments do not report the event of supplying information for validation purposes in the manner recited in the appealed claims. Further, the reports supplied by the Clearinghouse 116 are not used upon receipt by the content requester (i.e., the content user 112) in order to validate a request in the manner recited in the appealed claims. As a result, the Clearinghouse 116 in Ginter cannot be construed as a content managing node in the manner recited in the appealed claims because it does not provide a second report as defined in the appealed claims.

Thus, for at least these reasons and the reasons set forth in Appellant's Brief, the "receiving a second report" limitation recited in the appealed claims is not taught, described, or suggested in Ginter and is not supplied by the other cited references.

C.   **Reply to Examiner's Argument Number 3: Ginter does not disclose the comparing of the value from the second report and the transaction identifier from the first report to validate the request.**

The Examiner believes that Ginter teaches the comparison function recited in the appealed claims because "[f]irst, in good business practice, the verification and comparison steps are essential processes prior to the deliver of the payment for ensuring the accuracy of the transactions. Secondly, Ginter clearly teaches implementing a SPU (secure processing unit) for performing securing transactions (i.e., auditing, payment, repayments, credits), and the SPU

comprises a pattern matching engine for performing comparisons (column 61 lines 22-43 and column 65 lines 49-63 and Figs. 6-7, 9)." These arguments are respectfully traversed.

With respect to Examiner's first argument, the Examiner provides no support that the verification and comparison steps are essential processes prior to the delivery of payment in good business practice to ensure the accuracy of the transactions. In any event, Ginter merely reconciles budget and billing events internal to the requester (see column 33 line 66 through column 34 line 36 of Ginter) and does not reconcile a report received from content providing node with a report from a content managing node in the manner recited in the appealed claims.

With respect to Examiner's second argument, neither the VDE Rights Distributor 106 nor the SPU 500 in Ginter carries out the comparison function recited in the appealed claims. The VDE Rights Distributor 106 nor the SPU 500 in Ginter merely reconcile budget and billing events. The reconciling of information between the first and second reports in the appealed claims is not the same as the reconciling of budget and billing events in the manner described in Ginter. In the appealed claims, a comparison is performed between a transaction identifier included in the first report with a value included in the second report. The first report is provided by a content providing node in response to a transaction where a digital work was provided to a content requesting node from the content providing node in response to a request from the content requesting node. The second report originates from the content managing node in response to the supplying of information by the content managing node for validating the request. The generation of the first and second reports are not triggered by budget and billing events as defined in Ginter. Consequently, the processes described in Ginter cannot perform the comparing function in the manner recited in the appealed claims.

Thus, for at least these reasons and the reasons set forth in Appellant's Brief, the "comparison" function recited in the appealed claims is not taught, described, or suggested in Ginter and is not supplied by the other cited references.

D.   Conclusion

For at least the reasons expressed above and in the Appellant's Brief dated April 27, 2004, it is respectfully submitted that claims 9-13, 17-21, 24-30, and 34-37 are patentable over Ginter et al. and that rejection of these claims under 35 U.S.C. §102(e) is in error because the Examiner has failed to establish a prima facie case for rejection. Accordingly, it is respectfully requested that the that the Board reverse the Examiner on the issue presented in this brief and withdraw the rejection of claims 9-13, 17-21, 24-30, and 34-37 under 35 U.S.C. §102(e).

If the Board has any questions or comment, the Board is invited to call the undersigned attorney at the number below.

The Commissioner is hereby authorized by the undersigned to charge any additional fees which may be required, or credit any overpayment to **Deposit Account No. 19-3878**.

Respectfully Submitted,

Dated: <u>September 28, 2004</u>

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